

SUPPORT FOR THE AMENDMENTS

The present amendment amends claims 1, 2, 6, 20 and 21.

Claims 1, 2, 6, 20 and 21 have been amended to place these claims in a better condition for allowance.

Support for the amendment to claims 1, 2, 6, 20 and 21 is provided by the originally filed claims and specification (See e.g., page 4, lines 13-20, page 5, lines 24-25, page 6, lines 11-14 and 24-36, page 7, lines 1, 21-22, 27 and 34-35, page 8, line 2, page 9, lines 27-30, page 16, lines 5-12 and 32-33).

It is believed that these amendments have not resulted in the introduction of new matter.

REMARKS

Claims 1, 2 and 4-21 are currently pending in the present application. Claims 1, 2, 6, 20 and 21 have been amended by the present amendment. Claims 6-8, 14-18 and 21 stand withdrawn from consideration by the Examiner as being directed to a non-elected invention.

Applicants wish to extend their appreciation to Primary Examiner Anthony for the helpful and courteous discussion held on September 3, 2009, with their undersigned Representative. During the meeting, the indefiniteness rejection was discussed, along with potential amendments and/or arguments for overcoming the rejection. The content of this discussion is believed to be reflected in the remarks set forth herein.

The rejection of claims 1, 2, 4, 5, 9-13, 19 and 20 under 35 U.S.C. § 112, second paragraph, is obviated by amendment.

Claims 1 and 6 are considered to be indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention with respect to the recited limitation of “wherein on average from 0.05 to 100% of R¹, R² and R³ present in the molecule are not hydrogen.”

Claims 2, 20 and 21 are considered to be indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention with respect to the recited limitations of “wherein on average from 0.01 to 12 of R¹, R² and R³ present in the molecule are not hydrogen” (claim 2) and “wherein on average from 1 to 8 of R¹, R² and R³ present in the molecule are not hydrogen” (claims 20 and 21).

Proper claim construction requires that the recitation of “a” or “an” article be construed as “one or more” articles, unless the claim language, specification or prosecution history necessitates a departure from the general rule. See e.g., *Baldwin Graphic Systems Inc. v. Siebert Inc.*, 85 USPQ2d 1503, 1507 (Fed. Cir. 2008).

Amended claim 1 recites, in part, a composition comprising a cyclic compound represented by the formula (I) and at least one tautomeric structure thereof, wherein on average from 0.05 to 100 % of

R^1 , R^2 and R^3 present in the *composition* are not hydrogen. Amended claims 2 and 20 are directed to the composition of claim 1 and recite the limitations of wherein on average from 1 to 12 of R^1 , R^2 and R^3 present in the *cyclic compound* are not hydrogen and wherein on average from 1 to 8 of R^1 , R^2 and R^3 present in the *cyclic compound* are not hydrogen, respectively.

Amended claim 6 recites, in part, a cyclic compound represented by the formula (I) or a metal complex of the cyclic compounds, wherein on average from 0.05 to 100 % of R^1 , R^2 and R^3 present in the *composition* are not hydrogen. Amended claim 21 is directed to the cyclic compound of claim 6 and recites the limitation of wherein on average from 1 to 8 of R^1 , R^2 and R^3 present in the *cyclic compound* are not hydrogen.

Applicants respectfully submit that the originally filed claims and specification clearly indicate that the cyclic compound of formula (I) of the present invention may represent one or more cyclic compounds of formula (I), which may be present in a composition comprising the same, at least one tautomer thereof, at least one metal complex thereof and/or mixtures thereof (See e.g., original claims 1 and 6, and the specification at page 4, lines 13-20, page 5, lines 24-25, page 6, lines 11-14 and 24-36, page 7, lines 1, 21-22, 27 and 34-35, page 8, line 2, page 9, lines 27-30, page 16, lines 5-12 and 32-33).

As discussed in the present specification, in the case of a composition comprising a mixture of substituted and unsubstituted cyclic compounds of formula (I), for example, the lower end of these average values are indicative of low degrees of substitution, whereby substoichiometric amounts of these substituents are present on average (See e.g., page 7, lines 34-35 and page 16, lines 5-12).

“If the scope of the claimed subject matter can be determined by one having ordinary skill in the art, a rejection using this form paragraph would *not* be appropriate” (emphasis added; See MPEP § 706.03(d), Form Paragraph 7.34.01 Examiner Note).

Applicants respectfully submit that the amended limitations are in fact definite to a skilled artisan, since organic chemists are reasonably apprised as to the meaning of these phrases, especially in light of the disclosure provided by the present specification.

Since the meaning of the claimed subject matter is understood, or can at least be readily determined, by a skilled artisan, the claimed subject matter is considered to be definite and thus satisfies the requirements of 35 U.S.C. § 112, second paragraph.

Withdrawal of this ground of rejection is respectfully requested.

Upon a determination that the product claims drawn to the elected invention are found allowable, method claims drawn to the non-elected invention should be rejoined and examined for patentability, pursuant to MPEP § 821.04 and *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995).

In conclusion, Applicants submit that the present application is now in condition for allowance and notification to this effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

A handwritten signature in black ink, appearing to read "David P. Stitzel", is written over a horizontal line.

David P. Stitzel
Attorney of Record
Registration No. 44,360

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)